

No. 2647

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IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

ALASKA COAST COMPANY,
Appellant,
vs.
ALASKA PACIFIC FISHERIES,
Appellee.

On Appeal from the United States District Court
of the Western District of Washington,
Northern Division.

APPELLEE'S PETITION FOR REHEARING

KERR & McCORD,
C. H. HANFORD,
Proctors for Petitioner.

Filed

LOWMAN & HANFORD CO., SEATTLE

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F. D. Monckton,
Clerk.

No. 2647

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

A L A S K A COAST COMPANY, a Corporation,
Claimant of the Steamship "Jeanie,"
Appellant,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Appellee.

APPELLEE'S PETITION FOR REHEARING

To the Judges of the United States Circuit Court
of Appeals for the Ninth Circuit:

The appellee herein respectfully asks for a rehearing of this cause for the purpose of obtaining more explicit directions with respect to costs on the appeal and interest which has accrued during the pendency of the case on the appeal.

COSTS ON THE APPEAL

The concluding paragraph of the opinion rendered by this Court reads as follows:

“The decree of the District Court will therefore be reversed, with directions to enter a decree in favor of appellee for \$11,146.26 and costs.”

This leaves the matter with respect to costs on the appeal undecided.

Every issue in the case was litigated in the Appellate Court, as on a trial, *de novo*, and the appellee is the prevailing party, except as to the *amount* of damages for delay. According to the actual effect of this Court's decision the decree appealed from should be modified and affirmed as modified. If in form reversed, nevertheless, Rule 31 reserves power in the Court to award costs on the appeal as the Court may by a special order direct.

The point on which this Court bases its decision reducing the damages was not considered by the Court below, and its attention was not directed thereto, and the assignments of error do not mention it.

In the opinion written by Judge Gilbert in the case of the “*Argo*,” 210 Fed. Rep. 872-875, this Court said:

“The decree will be modified by striking therefrom the allowance of interest from the

date of the injury to the date of the decree. In other respects it is affirmed. As the attention of the Court below was not directed to the error of allowing the interest, the appellee will be allowed his costs on the appeal.”

The proctor who prosecuted the appeal in that case was not connected with the litigation until after Judge Howard, who rendered the decree appealed from, had ceased to be Judge of the District Court.

The appeal was sustained as to the principle contended for by the appellant and there was a substantial reduction of the amount awarded by the District Court to the appellee, nevertheless he was given costs on the appeal; in this case the main issue, as to liability for damages for delay, has been decided adversely to the appellant and it gains by the appeal only a reduction of the amount of damages less than ten per cent of the amount of the District Court's decree.

Observance of the rule of that case as an established rule of practice will discourage litigation in the Appellate Court involving only inadvertent errors which might be corrected without the expense and delay necessarily incidental to appeals.

We respectfully submit that the appellee herein, being the prevailing party on the trial *de novo*, is entitled to recover costs on the appeal as well as costs taxable in the District Court.

INTEREST ACCRUED DURING PENDENCY
OF THE CASE ON APPEAL

The opinion filed herein sustains the appellee's claim for interest on the amount of cash outlay by appellee and the decree should carry interest on that sum from the date of payment thereof up to the time of entry of the final decree. But a new decree for only \$11,146.26 will not include the considerable sum accrued during the many months from the date of the decree appealed from to the date of the final decree to be entered pursuant to the mandate of this Court.

We respectfully submit that direction should be given to the District Court to render a decree in favor of appellee for an aggregate sum including \$4,283.06, plus interest on that sum at the rate of six per cent per annum from April 8th, 1913, plus \$6,285.00 and interest on the aggregate sum at the same rate from and after the date of the final decree and costs. Such a final decree we believe will accord with the intention of the Court manifest in the opinion filed.

KERR & McCORD,
C. H. HANFORD,
Proctors for Appellee.

CERTIFICATE.

I, C. H. HANFORD, one of the proctors for the appellee in this cause, do hereby certify that I am counsel for the Petitioner named in this petition; that in my judgment said petition is well founded; and that it is not interposed for delay.

C. H. Hanford

Counsel for Petitioner.

